

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

STATE OF INDIANA)
) SS
COUNTY OF MARION)

**GLORIA JEAN RYERSON,
Complainant,**

**DOCKET NO. 05055
EEOC NO. TIN-40485**

v.

**INDIANA DEPARTMENT OF PUBLIC WELFARE,
Respondent.**

**ADOPTION OF HEARING OFFICER'S RECOMMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

The Indiana Civil Rights Commission, having reviewed and considered the Recommended Findings Of Fact, Conclusions Of Law, And Order, submitted in the action by R. Davy Eaglesfield, III, Hearing Officer, and the objections filed thereto by Complainant, adopts the submitted recommendation as the final Recommended Findings Of Fact, Conclusions Of Law, And Order of the Indiana Civil Rights Commission.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Recommended Findings Of Fact, Conclusions Of Law, And Order , submitted in this action be and hereby is adopted as the Final Findings of Fact, Conclusions of Law and Order of the Indiana Civil Rights Commission.

Signed: March 21, 1980

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Respondent.

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The undersigned Hearing Officer was appointed to hear the above-captioned case and all parties were notified of said appointment prior to the commencement of the hearing on August 20, 1979.

Complainant Gloria Jean Ryerson (hereinafter "Ryerson") was present at the hearing and was represented by counsel, Ms. Alice M. Craft and Ms. Donna Rae Eide. Respondent Indiana State Department of Public Welfare (hereinafter "Welfare") was represented by Mr. Gary Brock, Deputy Attorney General, and Thomas McKean, Senior Staff Counsel for Welfare. Mr. Brock stated that he had not been instructed with respect to Respondent State of Indian Division of Personnel (hereinafter "Personnel"). At the Pre-Hearing Conference held in this cause on May 7, 1979, Ms. Craft stated that she was considering joining Personnel as a Respondent. Mr. Parvin Price, Deputy Attorney General, who appeared at that time on behalf of Welfare, stated that unless he otherwise notified Complainant and the Hearing Officer, he would also represent Personnel. Although Earl F. Clinton and Wayne A. Stanton were named Respondents personally as well as in their official capacities for Welfare in Complainant's Amended Complaint filed February 12, 1974, Complainant did not proceed against them

personally. Also present throughout the hearing were Mr. Wayne Stanton, Administrator of Welfare (hereinafter "Stanton"), Daniel Roy Sacks, Personnel Officer of Welfare, and William E. Harding, Director of the Division of Administrative Services of Welfare.

Having considered the official record, the evidence admitted at hearing, the briefs of counsel, and being duly advised in the premises, the Hearing Officer hereby recommends the entry of the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Ryerson is a female currently residing in Indianapolis, Indiana.
2. Welfare is an agency of the State of Indiana and at all times related to this action is and has been an employer as defined in the Indiana Civil Rights Law, IC 22-9-1-3(h).
3. Personnel is an agency of the State of Indiana Charged with the promulgation and administration of rules and regulations concerning employment in the classified service of the State of Indiana pursuant to IC 4-15-2-5.
4. Ryerson began working for Welfare in Accounts and Audits in the classified service as a Clerk-Typist II on February 1, 1971.
5. Ryerson was promoted to the position of Clerk-Typist III on April 22, 1973.
6. During her employment with Welfare, Ryerson was evaluated by her supervisor on three occasions, and at each such evaluation she was rated as meeting the requirements of her position; the parties stipulated at hearing that she was not dismissed because she was not competent to do her job.
7. During May 1973, Ryerson became aware that she was pregnant.
8. During June 1973, Ryerson informed her supervisor, Robert Francis (hereinafter "Francis"), that she was pregnant and inquired whether she would be able to obtain maternity leave for the delivery of her child.
9. On October 29, 1973, Ryerson submitted a written request for maternity leave to Welfare.

10. On November 2, 1973, Ryerson was notified that her request for maternity leave had been denied by Stanton.
11. The reason given Ryerson for denying her maternity leave was that due to the work load in her section it was decided to be in the interests of the agency.
12. On November 30, 1973, Ryerson informed Welfare that she would commence maternity leave on December 3, 1973, and expected to return to her position.
13. On November 30, 1973, Ryerson was suspended for absence from duty without approval for five working days, with notice of dismissal to be effective December 29, 1973.
14. Ryerson was absent without approval and was dismissed solely because she was disabled by pregnancy and her request for maternity leave had been denied.
15. Ryerson delivered her child on December 19, 1973.
16. Ryerson could have returned to work at Welfare on or about January 8, 1974, three weeks after her delivery and five weeks after she stopped working.
17. At the time she was dismissed, Ryerson had accumulated three and one-half (3 1/2) days of paid sick leave for which she was not paid, but for which she should have been paid prior to her termination from the agency. Ryerson admits she was paid her accrued vacation pay.
18. At the time she was dismissed, Ryerson withdrew from membership in the Public Employees Retirement Fund.
19. When Ryerson was dismissed, her salary was two hundred thirteen dollars (\$213.00) by-weekly.
20. Because Ryerson was employed in the classified service, she was subject to the rules and regulations promulgated by Personnel pursuant to IC 4-15-2-5.
21. The rule promulgated by Personnel concerning maternity leave in effect at the time Ryerson requested maternity leave provided as follows:

Leave without pay (maternity). – The appointing authority, with the approval of the director, may, at his discretion, grant a maternity leave without pay, not

exceed one (1) year, to any regular employee who becomes pregnant....Personnel Board Rule 11, §11-12, Burns Admin. R. and Regs. (60-1330_-14 (1975 Pocket Supplement) (Emphasis added).

22. The rule quoted above in paragraph 21 is no longer in effect. (See Burns Admin. R. and Regs. (4-15-2-29)-13).

23. The rule promulgated by Personnel concerning sick leave in effect at the time Ryerson requested maternity leave provided as follows:

...(B) Sick leave with pay shall be granted to full time employees in the classified service at the rate of one (1) working day for each full month of employment...Personnel Board, Rule 11, §11-4, Burns Admin. R. and Regs. (60-1330)-7 (1975 Pocket Supplement) (Emphasis added).

24. The rule promulgated by Personnel concerning special sick leave without pay in effect at the time Ryerson requested maternity leave provided as follows:

The appointing authority, with the approval of the director, may grant leave without pay for a period not exceed two (2) years, whenever such leave is considered in the best interests of the service. (Burns Admin. R. and Regs. (4-15-2-29)-11.

25. Earned sick leave with pay was not available or granted to employees leaving their employment because of pregnancy. Such pay was granted to employees leaving their employment because of other medical disabilities.

26. No requests for maternity leave were granted by Welfare until the Personnel rule concerning maternity leave was amended, some years after Ryersons request.

27. There is no evidence that any employee who submitted a request for sick leave without pay for a bona fide disability was ever granted such leave.

28. Under the Personnel rules quoted above, regular sick leave was mandatory, and maternity and special sick leave without pay were discretionary with the appointing authority. By never granting maternity leave or sick leave without pay, Welfare treated pregnancy disabilities equally with other medical disabilities.
29. Only females become pregnant.
30. The denial of three and one-half days earned sick leave pay to Ryerson under the Personnel rules and policies then in effect, establishes a discriminatory practice toward her, because of her sex.
31. There is no evidence of any business necessity for Personnel rules making paid sick leave unavailable to employees terminating their employment with the agency because of pregnancy.
32. Any Conclusion of Law which should have been deemed to be a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties.
2. The complaint was timely filed.
3. Welfare and Personnel are each a "person" as that term is defined in IC 22-9-1-3(a).
4. Welfare is an "employer" as that term is defined in IC 22-9-1-3(h).
5. Personnel committed a "discriminatory practice" as that term is defined in IC 22-9-1-3(1) in that it maintained a system which excluded female employees, including Ryerson, from equal opportunities because of sex by promulgating and administering rules which made paid sick leave unavailable to employees disabled by pregnancy.
6. Ryerson was not suspended until after she should have been paid her earned paid sick leave pay.
7. As a result of discriminatory treatment by Welfare and Personnel, Ryerson lost salary in the amount of seventy four and 55/100 dollars (\$74.55) for three

and one-half earned days of paid sick leave, not paid her at the termination of her employment.

8. Amendments to the Personnel rule concerning maternity leave promulgated subsequently to Ryerson's complaint are not at issue in this cause.

9. The policy of Welfare with respect to maternity leave having been changed under subsequent Personnel rules, Ryerson can receive full relief without the issuance of a cease and desist order.

10. Any Finding of Fact which should have been deemed to be a Conclusion of Law is hereby adopted as such.

ORDER

1. Welfare and Personnel shall credit Ryerson with three and one-half (3 1/2) days accrued paid sick leave.

2. Welfare shall pay to Ryerson seventy four dollars and fifty five cents (\$74.55) within thirty (30) days of receipt of notice that a majority of the Commission has approved this Order.

Dated: September 19, 1979